



Comments to the National Organic Standards Board

October 17, 2006

Submitted by:

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Regulatory and Policy Manager

Thank you very much for the opportunity to comment. OTA thanks the NOSB committees for all their very hard work and appreciates all the time put in to keep the process of continual improvement going.

"Interim Report of the National Organic Program Organic Pet Food Task Force, April 7, 2006"

The changes proposed for the rule by the Pet Food Task Force in its Interim Report are excellent and will allow the sector to continue to expand, perhaps even faster than its current extraordinary rate of over 40% per year. This percentage growth is of course from a small base, but it is progress like this that keeps the demand for organic raw agricultural product high, and we appreciate it greatly. OTA looks forward to prompt action by the Handling Committee, full Board, and NOP on this exciting development.

"Compost tea, Vermiculture, and Dehydrated manure"

OTA thanks NOSB for consolidating the previous work on compost, vermicompost and compost tea. OTA supports the NOP's adoption of this recommendation as a guidance document for producers.

"Hydroponics in organic certification"

The discussion piece on hydroponics is also good and will allow NOSB to become sufficiently informed to begin to develop appropriate standards. While a few years ago, many might have argued that hydroponics, being a soil-less system, was not suitable for organic production, in this age of organic aquaculture we must focus on setting high standards for all kinds of ecological production management systems, not just those which have their roots literally in the soil.

"Agricultural" and "Nonagricultural" Substances

OTA appreciates the amount of very deep work that went into the "Recommendations Relative to "Agricultural" and "Nonagricultural" Substances for National List Consideration."

However, while the recommendations point toward a desirable end, we may not be ready, for all parts of the recommendation to move forward. While OTA supports the immediate designation of yeast as agricultural, and notes that some yeast already meets the rule, it is apparent the trade is not ready for all microbials, including bacteria, to be designated as agricultural. We therefore would not support the

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deletion of the words “or a bacterial culture” from Recommendation #1. We do support the other deletions in the definition of “Nonagricultural substance.”

In Recommendation #3, OTA supports the inclusion of “Yeast” but not “Dairy cultures,” as questions remain regarding the appropriate standards for organic dairy cultures.

Please note that a commenter has stated that not only should yeast be considered agricultural, but that certain specified practices should be considered organic while others should not.

OTA would also support moving yeast to 205.606 if it can be done as a technical correction, which it might be considered if the definition of “nonagricultural” changes.

“Recommendation for the Establishment of Commercial Availability Criteria”

OTA appreciates the difficulty of implementing the requirements of the Federal court order. We recognize that both NOP and NOSB are working hard to abide by both the letter and the spirit of the Court’s order. However, in approaching this subject we believe the needs of both small and large handlers must be taken into account, and OTA is concerned that the proposed petition for reviewing substances for inclusion on 205.606 will prove unduly burdensome, on both the petitioner and the NOSB. It is our fear that the resultant delays in adding materials to the National List could mean that many products that currently include some nonorganic agricultural ingredients will no longer be compliant after June 7, 2007.

We also wish to emphasize the fact that the inclusion of a substance on 205.606 does not, unlike other sections of the National List, automatically permit its use in an organic product. After it appears on the National List, a nonorganic agricultural product must then be determined to be commercially unavailable in organic form by an Accredited Certifying Agent (ACA).

A. Revise procedures for petitioning materials onto 205.606.

First, we would like to see the petition address whether the petitioned substance is appropriately placed under the category of “agricultural products.” Since there can be some question as to whether a specific ingredient should be classified as agricultural, petitioners should be asked to provide a rationale for this designation.

Secondly, the amount of research required to address all the market factors mentioned in Recommendation A.2. would place an undue burden on a petitioner, and reviewing this information would consume a huge amount of the NOSB’s scarce time and resources. This information is not technical data but consists largely of subjective market assessments, which require considerable speculation. Additionally, much of this information is likely to change by the time the substance is added to the National List. For example, regarding “evidence of hoarding,” how might a small handler substantiate the very real concern that a few large manufacturers could force out their competition by buying up all available organic supplies of a critical minor ingredient?

One closely related issue is that identification of sources of product or ingredients is usually confidential business information. We must protect the identity of these sources as confidential or risk having commonly available organic product bought out by perhaps even one large buyer, which would force small business to drop product lines, a situation from which it would be extremely difficult to recover.

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B. NOSB and NOP role in review of petitions.

OTA does not believe that the NOSB should be required to “review the petitioner's claim that no organic substitutes are commercially available in the appropriate form, quality or quantity needed to fulfill an essential function in a system of organic handling” as a criterion for including it in Section 205.606. This function, at this level of specificity, is best left to the ACA.

OTA understands that the OFPA does require that the NOSB review information about “alternatives to using the substance in terms of practices or other available materials,” but we believe that this requirement was intended to apply to nonsynthetic alternatives to synthetic substances being proposed for inclusion on the National List. Extending this requirement to agricultural products that may have organic alternatives is inappropriate.

However, if NOP and NOSB maintain this interpretation, OTA suggests that a less burdensome requirement would still lead to the presentation of commercially valid information on alternatives. It is possible to use the public comment period to provide evidence that a substance is not currently commercially available in organic form, without requiring such extensive research and documentation at the time the petition is filed. We suggest implementing a process that involves posting all petitions for inclusion on 205.606 for public comment prior to NOSB review, in order to permit potential suppliers of a petitioned product to come forward. While the absence of any supplier response would support the petitioner's case that the substance is not currently commercially available as organic, the converse would not be grounds for denying the petition, since the commercial availability situation could change as the market, the weather, and other circumstances change. The petitioner would thus only have to provide information about the potential for interruption of supply if some response is received to the posting of the petition.

Finally, we are concerned that no attention has been given to the problem of how to identify specific agricultural products on Section 205.606, and how narrowly defined an individual listing must be. We already have some dissent concerning different forms of lecithin, with one manufacturer suggesting that lecithin should be removed from 205.606 due to its current availability as organic, while another insists that the types of organic lecithin currently available are not suitable for their needs. Similar problems could arise for any number of ingredients, such as corn starch, flavorings, and microbial cultures, to name a few. OTA supports the use of the broadest possible categories of agricultural products, on the grounds that the commercial unavailability of any specific form of that product must still be demonstrated to the satisfaction of the ACA.

C. ACA's role in determining commercial availability of materials on 205.606.

NOSB's proposed guidance for ACAs goes a long way towards correcting the problem of over-specification that has persisted as a serious loophole in compliance by some handlers. We suggest adding to this guidance the requirement that a handler who has been unable to obtain an organic ingredient must implement a proactive plan to develop acceptable organic sources. Such a plan should be included in the applicable Organic Handling Plan, with activities to implement it verified by the ACA in the course of annual updates. Such activities might include contracting with growers or suppliers to produce an acceptable product, conducting trials on comparable organic ingredients that are available, and similar actions. This would eliminate much of the questionable evidence that apparently exists regarding commercial unavailability claims.

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We would also like to see ACAs report their list of materials granted 606 allowances more often than annually—preferably quarterly. This list should be published on the NOP web site, to allow potential suppliers of these products to make their availability known to manufacturers who are looking for them.

“Invitation for Public Comment on Aquaculture Standards”

OTA looks forward to the development of organic aquaculture standards. These standards must be based on ecological management and must be as close to the ideal as a workable set of standards can be. This is the formula that has allowed the continued success of organic agriculture—using the ideal as the guide and using practicality as the limiting factor. There must be a substantial difference between this standard and other sustainable standards, and this standard must not fall below any other workable standard. In addition, NOSB must not forget that organic certification is based on verification of the process used to produce a product. Organic practices have evolved as a means toward having a net positive impact on our environment. Do not let the aquaculture standards be inconsistent with all other organic process standards, but base them on ecologically sound production practices. That will allow growth in an ecological production management system that will have a positive environmental impact.

Recommendations of the Compliance, Accreditation, and Certification Committee

OTA supports all three recommendations of this Committee (“Guidance: Listing of Certifying Agent’s Name on Packaged Product”; “Standardized Certificates”; and “Expiration Dates on Certificates of Organic Operation”), and notes that an expiration date on a certificate is not the same as an expiration date for the certification of an operation. Including issuance and renewal dates on a certificate should satisfy buyers’ needs for current information.

Colors, nonsynthetic only

If NOSB chooses to allow colors to drop off 605(a) as part of the sunset process, OTA requests that NOSB expedite the review of color petitions in its consideration of 606 petitions.

OTA has been urging, and will continue to urge, its members to participate in this process and file petitions if necessary.

For the record, in my oral remarks, I substituted the word “flavors” for “colors.”

